

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NEIL JAMES ROBERSON,

Petitioner,

v.

JASON BENNETT,

Respondent.

Case No. C24-1198-TL-SKV

REPORT AND RECOMMENDATION

I. INTRODUCTION

Petitioner Neil Roberson is a state prisoner who is currently confined at the Stafford Creek Corrections Center in Aberdeen, Washington, pursuant to a judgment and sentence entered in Skagit County Superior Court case number 18-1-00907-29. *See* Dkt. 4-1. He has filed a petition for writ of habeas corpus seeking relief from that judgment and sentence. *Id.* Though Petitioner presented his petition as one filed under 28 U.S.C. § 2241, the Court has construed the petition as one filed under 28 U.S.C. § 2254. *See* Dkt. 7 at 2 (citing *White v. Lambert*, 370 F.3d 1002, 1009-10 (9th Cir. 2004) (“[Section] 2254 is the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a state court judgment[.]”)).) The petition has not been

1 served on Respondent. After careful review of the petition, and the balance of the record, this
2 Court concludes that Petitioner's federal habeas petition should be dismissed.

3 II. DISCUSSION

4 The Court received Petitioner's federal habeas petition for filing on August 6, 2024. *See*
5 Dkt. 1. Petitioner asserted therein that his current custody is unlawful because the statute under
6 which he was sentenced is unconstitutional. *See* Dkts. 4-1, 4-3. More specifically, Petitioner
7 claimed that he had received an indeterminate life sentence in accordance with the provisions of
8 RCW 9.94A.507, which authorized "a board" to increase his mandatory minimum term of
9 confinement, and that this constituted a violation of his Sixth Amendment right to a jury trial.
10 *See id.*

11 After reviewing the petition, this Court determined that the single claim asserted by
12 Petitioner was not eligible for federal habeas review. Thus, on September 10, 2024, this Court
13 issued an Order directing Petitioner to show cause why this action should not be dismissed for
14 failure to exhaust state court remedies. Dkt. 7. The Court explained therein that in order to
15 obtain relief under § 2254, a petitioner must demonstrate that each of his claims for federal
16 habeas relief has been properly exhausted in the state courts. *See id.* at 2 (citing 28 U.S.C.
17 § 2254(b)-(c)). The Court further explained that Petitioner made clear in his petition he had not
18 presented the claim raised therein to any state appellate court for review, and that the claim was
19 therefore unexhausted. *Id.*

20 Petitioner was directed to file a response to the Order to Show Cause within thirty days
21 and was advised that his failure to timely respond would result in a recommendation that this
22 action be dismissed. To date, Petitioner has filed no response to the Court's Order. Because
23 Petitioner makes no showing that he presented his proposed ground for federal habeas relief to

1 the state courts for review, his claim is unexhausted and ineligible for federal habeas review at
2 this time.

3 III. CONCLUSION

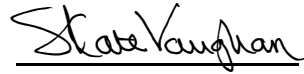
4 Based on the foregoing, this Court recommends that Petitioner's federal habeas petition
5 (Dkt. 4-1) and this action be DISMISSED without prejudice. The Court further recommends that
6 Petitioner's application to proceed *in forma pauperis* (Dkt. 4) be DENIED as moot.

7 A petitioner seeking post-conviction relief under § 2254 may appeal a district court's
8 dismissal of his federal habeas petition only after obtaining a certificate of appealability from a
9 district or circuit judge. A certificate of appealability may issue only where a petitioner has
10 made "a substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2).
11 A petitioner satisfies this standard "by demonstrating that jurists of reason could disagree with
12 the district court's resolution of his constitutional claims or that jurists could conclude the issues
13 presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537
14 U.S. 322, 327 (2003). Under the above standard, this Court concludes that Petitioner is not
15 entitled to a certificate of appealability in this matter. This Court therefore recommends that a
16 certificate of appealability be denied. A proposed Order accompanies this Report and
17 Recommendation.

18 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
19 served upon all parties to this suit not later than **fourteen (14) days** from the date on which this
20 Report and Recommendation is signed. Failure to file objections within the specified time may
21 affect your right to appeal. Objections should be noted for consideration on the District Judge's
22 motions calendar **fourteen (14) days** from the date they are filed. Responses to objections may
23 be filed by **the day before the noting date**. If no timely objections are filed, the matter will be

1 ready for consideration by the District Judge on **November 5, 2024.**

2 DATED this 15th day of October, 2024.

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5 S. KATE VAUGHAN
6 United States Magistrate Judge
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